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C O N F I D E N T I A L SECTION 01 OF 03 KATHMANDU 001005

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SUBJECT: PARLIAMENT DISSOLVED; ELECTIONS CALLED FOR NOVEMBER; PM KICKED OUT OF PARTY

REF: A. KATHMANDU 996

[B](#). KATHMANDU 995

[C](#). KATHMANDU 740 (EXDIS)

Classified By: Ambassador Michael E. Malinowski, Reasons 1.5(b),(d)

[1](#). (C) Summary. Nepal's King on May 22 announced the dissolution of Parliament and called elections for November 13 after a faction of the ruling party refused to support Prime Minister Deuba's attempt to extend the state of emergency. The ruling party then kicked out the PM May 23. Three Ministers resigned May 23, and the PM will likely appoint a new Cabinet. Deuba's move was constitutional, experts judged, but raises many questions including what happens if circumstances prevent elections from being held and whether the emergency can be extended. After dissolution Parliament's upper house takes on many of the roles of the lower house, including deciding on the emergency, but Deuba does not likely have the votes there to secure an extension. Alternatively, the emergency could be extended by executive fiat. The army says recent developments will have no effect on their operations. Deuba has tried to make the best of a bad situation, but will be under tremendous pressure to bring about positive change in the coming months to justify his actions. End Summary.

Parliament Dissolved, Elections Slated, PM Excommunicated  
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[2](#). (SBU) On the recommendation of Prime Minister Sher Bahadur Deuba's Cabinet, Nepal's King Gyanendra dissolved the lower house of Parliament late on May 22 and set fresh elections for November 13. His announcement followed an inconclusive and hastily convoked meeting of Nepali Congress Party (NCP) Members of Parliament earlier in the evening. The MPs convened after a stormy meeting of the Party's Central Working Committee (CWC) - dominated by supporters of Deuba's political rival, NCP President and former PM Girija Prasad ("G.P.") Koirala - which decided not to support Deuba's efforts to extend the state of emergency in effect since November 26, 2001. (Note: According to PM Deuba, he acted to preempt a no-confidence motion reportedly planned for the afternoon of May 23 (Septel). End Note.) Another CWC meeting held May 23 decided to strip Deuba of his NCP membership.

Three Ministers Resign; New Cabinet a Possibility  
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[3](#). (C) Late in the day Post learned that three Ministers had resigned: Ram Sharan Mahat at the Finance Ministry; Amod Prasad Upadhyaya at Education and Sports; and Rajendra Kharel at Women, Children and Social Welfare. Tirtha Man Shakya, a lawyer and former Chief Secretary (Nepal's highest-ranking civil servant), confirmed that after dissolving Parliament the PM is free to dismiss his cabinet and appoint "anyone off the street." Speculation is rife in the capital about who will be brought in to serve in an interim cabinet.

Deuba's Gambit Constitutional  
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[4](#). (C) As related Ref C, Deuba was constitutionally within his rights to dissolve Parliament and call for new elections. The King, as constitutional monarch, was then compelled to accede to the PM's request. Under the current 1990 constitution, a precedent was set when former Prime Minister G.P. Koirala dissolved Parliament and called for new elections in 1994 after members of his own party withdrew their support on a key policy vote. The Supreme Court upheld Koirala's 1994 move, but subsequent attempts to dissolve Parliament by a minority government PM in 1995 and a coalition government PM in 1998 were blocked by the Court because these PMs moved after no-confidence motions were already underway. In acting before a no-confidence motion could be tabled, Deuba seems to have taken into account the Court's inevitable scrutiny on this count.

But Raises Thorny Constitutional Issues  
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[5](#). (SBU) Even so, Deuba's actions raise a number of complicated constitutional issues. For example, Nepal's

constitution does not include a provision for what happens when elections cannot be held within a specified period of time, in this case six months, as may eventually be the case given Nepal's widespread Maoist insurgency. Although Deuba's actions to date have been constitutional, questions remain about what would happen if the November 13 elections do not come off or are contested. According to Tirtha Man Shakya, simply setting a date was enough to fulfill the constitutional requirement. Whether or not elections are actually held on that date is immaterial. Shakya admitted, however, that although he himself considered this view legally sound, it was subject to review by the courts, who may take a different view. He added that Nepal's constitution is oddly silent on the subject of what measures would have to be taken in the wake of a failure to hold Parliamentary elections. Again, he said, this is a matter for the courts to decide.

#### How to Hold Elections?

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16. (C) How to hold elections within six months, as required by the constitution, is the greatest challenge now facing Nepal's democracy. The army has declared itself ready to guarantee the security of the elections, but under emergency conditions this task would be problematic at best. Shakya suggested that the constitution provides one way out by defining a quorum in Parliament as twenty-five percent of members. Thus a partial election could be held - in as few as 52 of Nepal's 205 constituencies - that would serve to constitute a new body.

#### Upper House Takes Lower House Powers

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17. (C) Some critics alleged that the emergency will lapse because the bill to extend it has not yet been introduced into the upper house, where it must "mature" for five days before a vote can take place. Legal experts demurred, however, stating that under the constitution the upper house takes up the powers of the lower house when the latter has been dissolved. Therefore, because the bill has already been introduced and has matured in the lower chamber, the upper house can go ahead and vote on it. (Note: Deuba's action dissolved the lower house, the House of Representatives, but the upper house - the National Assembly - remains in place. The National Assembly has sixty members, including ten "of high reputation" nominated by the King; 35 elected by the lower house; and three each elected by local officials in Nepal's five development regions. End Note.)

#### Emergency Unlikely to Pass Upper House

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18. (C) Under the constitution, following the expiration of the initial six-month period, the state of emergency can be extended an additional six months by a two-thirds vote of Parliament. Since the lower house has been dissolved, it falls to the upper house to vote on an extension. As 23 of the National Assembly's 59 sitting members belong to the main opposition party, the CPN-UML, Deuba will be unable to extend the state of emergency for the full six months without UML support. (Note: Deuba told the Ambassador May 23 that he does not believe that he has enough votes in the upper house to get the motion approved (Septel). End Note.)

19. (C) However, by keeping the Assembly out of session, he will be able to continue the emergency for an additional three months by having the Cabinet ask the King to issue an Ordinance to that effect. Alternatively, should the state of emergency lapse the PM could have the King declare a new emergency, starting the clock over again. Shakya judges that in this way the government could declare successive emergencies, with only a gap of a day - or even hours - between them.

#### General: No Impact on RNA Operations

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10. (C) Chief of General Staff Lt. Gen. Pyar Jung Bahadur Thapa said that dissolution of Parliament and possible expiration of the state of emergency will have "no immediate impact" on Royal Nepalese Army (RNA) operations. General Thapa did not want to speculate much beyond the near term, however.

#### Comment

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11. (C) Painted into a corner by the machinations of political rivals, PM Deuba has tried to make the most of a bad situation. By calling new elections he bought time to clean house and continue the prosecution of the campaign against the Maoists, who of late seem to be feeling the heat. By his actions he has shown himself conversant with twelve years of constitutional legal precedent, and he shows every

indication of continuing to use the law to his own advantage.

Deuba may have six months to a year in which to justify his actions and make his mark - to get his country back on an even political and economic keel. The pressure for him to perform is now greater than ever, as his critics will take every opportunity to drag him down.

MALINOWSKI